

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16632 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the concerned : NO  
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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RAJESH BHOLASING RAJPUT

Versus

STATE OF GUJARAT  
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Appearance:

1. Special Civil Application No. 16632 of 2003  
MS SUBHADRA G PATEL for Petitioner No. 1  
MS. PAURAMI SHETH, LD. AGP for Respondent No. 1-3  
RULE SERVED for Respondent No. 2-3
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CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 04/03/2004

ORAL JUDGEMENT

1. By this petition under Article 226 of the

Constitution of India, the petitioner has challenged the order of detention No: PCB/PASA/186/2003 dated 19-9-2003 (Annexure-A) passed by respondent no.2 under section 3 (1) of The Gujarat Prevention of Anti Social Activities Act, 1985 (herein after referred to as 'PASA Act' for short); and prays for quashing and setting aside the same.

2. In the grounds of detention (Annexure-B) it is state that one case has been registered under the provisions of Bombay Police Act against the petitioner on 27-8-2003. It is alleged that the statements of the witnesses have been recorded in unregistered cases in connection with the incident of 18-5-2003 and 22-6-2003.

3. The petitioner has been branded as 'bootlegger'. The privilege under section 9 (2) of the PASA Act has bene claimed contending that the witnesses apprehended fear to their person and property from the petitioner and therefore requested to withhold their identity and that in the public interest it was necessary to withhold the identity of the witnesses invoking section 9 (2) of the PASA Act.

4. The order of detention has been challenged on the ground that except the statements of witnesses verified by the detaining authority, there is no contemporaneous material to reach subjective satisfaction for invoking the privilege under section 9 (2) of the PASA Act.

5. It is not disputed that in the instant case except the statements of the witnesses verified by the detaining authority, there is no other contemporaneous material as regards the antecedents , character and the background of the detenu; that there is no inquiry as regards the genuineness of the statements of the witnesses and also the genuineness of the fear expressed by them. There is no verification as regards the veracity of the incident alleged against the petitioner. It is a settled legal position that the detaining authority has to take into consideration the antecedents, character, background of the detenu etc. while considering the need for exercise of powers under section 9 (2) of the PASA Act. The authority has to scale the right of the detenu of making an effective representation one hand and the public interest on the other, and has to strike a balance between the two. There is nothing to show that the authority undertook such an exercise and therefore the exercise of powers under section 9 (2) of the PASA Act can be said to have bene vitiated. There is no contemporaneous material to indicate the exercise

undertaken as contemplated under section 9 (2) of the Act has been undertaken. No reliance can be placed only on the statement of the witnesses for sustaining the order of detention and therefore it can be said that, there is no proper exercise of powers under section 9 (2) of the Act for want of material to indicate the exercise as stated earlier.

6. Under the circumstances, the impugned order is liable to be quashed and set aside for want of proper exercise of the powers under section 9 (2) of the PASA Act.

7. In the result , the petition is granted and accordingly allowed. The impugned detention order No: PCA/PASA/186/2003 dated 19-9-2003 (Annexure-A) passed under the Prevention of Anti Social Activities Act, 1985 by Respondent No.2 is quashed and set aside. The petitioner detenu Rajesh Bholasing Rajput is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service permitted.

Dt: 4-3-2004

( N.G. Nandi, J )

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